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MARITIME SAFETY COMMITTEE  
76th session  
Agenda item 4

MSC 76/ISWG/7/3  
31 July 2002  
Original: ENGLISH

## MEASURES TO ENHANCE MARITIME SECURITY

### Intersessional Working Group on Maritime Security

#### Consideration of proposals and information on maritime security issues Draft Regulation XI-2/9 – Control

Submitted by the United States

#### SUMMARY

**Executive summary:** This document supports new regulation XI-2/9 that contains control measures applicable to maritime security, with some additions to reflect the issues raised during the plenary discussions at MSC 75. In addition, this document provides comments on some of the issues in need of resolution prior to the adoption of draft regulation XI-2/9.

**Action to be taken:** Paragraph 14

**Related documents:** MSC 75/17/29, MSC 75/24, MSC 75/WP.18

#### Background

1 The Maritime Safety Committee at its seventy-fifth session established a working group on Maritime Security. The Maritime Security Working Group drafted new regulation XI-2/9 describing control measures authorized available to port States when violations of the draft security requirements occur. Following the plenary discussions, the MSC recognized that further deliberations were necessary in order to address all issues surrounding the enhanced control regime for maritime security. Consequently, the matter was referred to the Intersessional Working Group Meeting for further consideration.

2 In order to assist the WG in considering the control regime, the United States provides the following comments on the issues surrounding the control measures for maritime security.

#### Discussion

3 IMO has developed a well-established system of flag State implementation and port State control so that international rules and standards have real effect. The cornerstone of the port State control system for safety is SOLAS regulation I/19, which provides for certificate inspections as the means of ensuring ship compliance. If clear grounds exist to believe a ship is in violation of SOLAS, control measures may be exercised against that ship to ensure that the

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safety violation is appropriately rectified. The following elements of the control system in regulation I/19 provide an excellent foundation on which to build a control system for ship and port facility security:

- .1 uniform implementation;
- .2 compliance verification;
- .3 prescribed control mechanisms; and
- .4 compensation for undue delays.

4 However, the traditional port State control measures are incomplete when applied to maritime security. For example, regulation I/19 presumes that control is only to be exercised after a ship's entry into port and for physical conditions related to the ship itself. Within a security context, asserting control of a ship after port entry could increase the risks and consequences of a security incident and severely limits the ability of a port State to adequately detect and deter such incidents. Indeed, the most prudent action may be to prevent the ship from entering the port entirely. Moreover, to ensure maritime security, the port State must fully consider the condition and status of the ship, its crew and cargo, and the condition and status of port facilities that the ship has visited. These factors are all relevant in deciding what control measures are necessary.

5 An effective control system is a crucial part of the new maritime security regime. The US believes that draft regulation XI-2/9 establishes the appropriate control system. Draft regulation XI-2/9, like regulation I/19, embodies the concept that a certificate is the primary means of determining a ship's compliance with the new regulations for maritime security. It also requires control officers to have clear grounds for believing a violation has occurred before exercising any control measures. However, draft regulation XI-2/9 enhances traditional port State control by allowing inspections to occur outside a port, consistent with principles of international law, so that early intervention is done when necessary. It also allows for control in cases where a ship has been in contact with a port facility that violates SOLAS, as amended by the Chapter XI-2, or has conducted a ship-to-ship transfer where the transferring ship does not comply.

6 To balance these expanded control measures, the Working Group included a consultation process so that a compliant ship that has been to a non-compliant port facility can demonstrate that it does not pose a security risk and may therefore proceed with its business. It further provides for notification of interested parties if control measures are imposed. Most importantly, draft regulation XI-2/9 provides port States with an appropriate range of control options when clear grounds exist to believe that a violation may have occurred.

7 The US fully supports proposed regulation XI-2/9 and believes that its current text should remain as drafted, with potential additions, as described below.

#### **Issues identified at MSC 75**

8 In MSC 75/24, paragraph 17.118, the Committee noted several issues that would need to be resolved before draft regulation XI-2/9 was adopted.

9 The Committee noted that guidelines would be necessary to rule out subjectivity in the implementation of regulation XI-2/9. While some subjectivity is required in order to meet potential security threats before they become security incidents, the US agrees that standard

implementation procedures are needed. The most appropriate and accessible location for such procedures appears to be in the IMO Manual “Procedures for Port State Control,” (resolution A.787(19) as amended by A.882(21)). While it is recognized that in some countries, the officers carrying out control for maritime security may be different than those carrying out control for safety and environmental protection, in many cases, the procedures and standards will be the same. The Flag State Implementation Sub-Committee should be requested to develop such amendments to “Procedures for Port State Control” once regulation XI-2/9 is approved.

10 The Committee noted that “it was not clear how Governments would get information on a port facility being in violation of the security requirements,” for use in exercising control pursuant to draft regulation XI-2/9 subparagraph 2.2. The US believes that the information provided to the Organization pursuant to draft regulation XI-2/8 will be the starting point for a Port State’s verification process. The contact information provided in draft regulation XI-2/8 should enable Port States to discuss specific security concerns on ships and their cargo with Contracting Governments prior to the ship’s arrival, including requests for any violation information, if warranted. Another key element to a port facility’s compliance with the International Ship and Port Facility Security (ISPS) Code is the Contracting Government’s oversight, approval, and revision of the port facility security plan. As provided in draft regulation XI-2/8, this information gets transmitted to the Port State via the Contracting Governments communication to the Organization in the form of the list showing the approved Port Facility Security Plans and the locations covered by each plan. Thus a Port State can verify whether a ship and its cargo were loaded in a location in compliance with the ISPS Code. However, the US believes a time period should be added to ensure mandatory periodic updates of the information provided to the Organization by the Contracting Government enabling Port States to ensure the port facility plan’s currency. Therefore, the US proposes the following amendment to Regulation XI-2/8 paragraph 2 as follows:

“2 Contracting Governments shall, within one year from the date of adoption of the ISPS Code, and at five year intervals thereafter, communicate.....”

11 The Committee noted that the parameters for exercising control of ships for prior violations were not defined. The US believes that draft regulation XI-2/9, subparagraph 3, is intended to address this situation. A violation should be considered a security risk until it has been adequately rectified. The consultation process described in regulation XI-2/9, subparagraph 3, is designed to ensure that all stakeholders have input in determining whether a violation at a port facility necessitates control of the ship.

12 The Committee noted the issue of when a Contracting Government would be expected to give notice of its intention to initiate or apply a control measure. The US believes that this contingency is well described in draft regulation XI-2/9, subparagraphs 4 and 5, in that Contracting Governments are obligated, except in emergencies, to immediately inform in writing a designated list of affected stakeholders of a decision to impose a control measure.

13 The Committee noted the issue of detention *vis-à-vis* delay. The US agrees that, since the control regime for maritime security is separate from the control regime in Chapter I, provisions would be required to address avoidance of undue delay and compensation in the event of such circumstances. Adding a new paragraph to draft regulation XI-2/9, similar to subparagraph (f) of regulation I/19, may be appropriate. Accordingly, the US proposes the following:

Regulation XI-2/9, new paragraph 6

“When exercising control under this regulation all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained or delayed it shall be entitled to compensation for any loss or damage suffered.”

**Action requested of the Committee**

14 The Committee is invited to consider the views contained in this paper and take action as appropriate.

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